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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,785

Applicant(s)

MORSE, KEVIN C.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. Applicant's amendment filed November 1, 2004 is acknowledged. Accordingly, claims 1-20 remain pending.
2. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The claims are replete with errors. Some examples follow. See 37 C.F.R. §1.75(d)(1), MPEP §608.01(o), and MPEP§2181. Correction of the following is required:

- a. The "means for documenting a respective inventory" as recited in claim 1.
- b. The "means for automatically transmitting a signal" as recited in claim 11.
- c. The "means for decrementing a respective inventory" as recited in claim 18.

Claim Rejections - 35 USC §112

4. The following is a quotation of the 2nd paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-20 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

6. In claims 1 and 11, Applicant has failed to clearly link and associate the “means for automatically transmitting a signal” to corresponding structure in the specification.

7. In claim 18, Applicant has failed to clearly link and associate the “means for decrementing a respective inventory quantity” to corresponding structure in the specification.

8. Also in claim 18, Applicant has failed to clearly link and associate the “means for inputting restaurant order information a respective inventory quantity” to corresponding structure in the specification.

Claim Rejections - 35 USC §102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-7, 11-15 and 16-19, as understood by the Examiner, are rejected under 35

U.S.C. §102(e) as being anticipated by Banerjee et. al. (U.S. 2002/0188495 A1)(“Banerjee”).

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Banerjee discloses a restaurant system with a portable handheld unit (inherent in Customer Ordering Client 115.

11. Claims 1-7, 11-15 and 16-19, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Walker et. al. (U.S. 6,341,268 B2)(“Walker ‘268”).

12. Claims 1-7, 11-15 and 16-19, as understood by the Examiner, are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Hoffman et. al. (U.S. 2003/0074239 A1)(“Hoffman ‘239”).

Claim Rejections - 35 USC §103

13. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-7, 11-15 and 16-19, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Banerjee in view of Camaisa et. al. (U.S. 5,845,263) (“Camaisa”).¹ It is the Examiner’s principle position that the claims are anticipated because the handheld unit is inherent since a laptop or personal digital assistant is handheld.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Banerjee as taught by Camaisa to include the handheld unit. Such a modification would have made holding the device easier.

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15. Claims 8-10, 16, and 20, as understood by the Examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over the Banerjee/Camaisa combination and in further view of Coleman et. al. (U.S. 5,839,115) ("Coleman '115"). The Banerjee/Camaisa combination discloses as discussed above but does not directly disclose displaying a graphical representation of a table. Coleman '115 teaches displaying a graphical representations of tables.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the Banerjee/Camaisa combination in further view of Coleman '115. Such a modification would have allowed managers to visually see the state of the restaurant.

It is the Examiner's position that it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the Banerjee/Camaisa/Coleman '115 combination to include displaying a single waiter's tables. Such a modification would have allowed a single waiter to quickly visualize all outstanding orders.

16. Additionally, if the sever structure was not inherent, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Banerjee/Camaisa/Coleman '115 to include the claimed server structure. It is the Examiner's position that absent evidence of new or unexpected results, it is not inventive in terms of patentability to take one or more servers ($S_1, S_2, S_3, \dots S_N$) which perform one or more tasks ($T_1, T_2, T_3, \dots T_N$) and add (or subtract) an additional number of servers (X) to perform all or part of the same tasks by allocating the tasks between the various servers (*i.e.* S_1 and S_{N+1} perform T_1 ; S_2 and S_{N+2} perform T_2 ; S_3 and S_{N+3} perform T_3 ; ... while S_N and S_{N+X} perform T_N).

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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The prior art is replete with examples showing why such scaling (both increasing and decreasing the number of servers) is desirable.²

In other words, a modification increasing the number of servers (*e.g.* having two servers perform a task previously performed by one server) is analogous to making functions, structures, or actions separable. It is the Examiner's position that when the difference between the claimed invention and the prior art is that the prior art does not disclosed an element as separable, as a matter of law, it would have been obvious to one having ordinary skill in the art to make the element separable. See MPEP §2144.04 V. *C.* and *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961). As noted above, it is desirable to allocate the server tasks to various servers to help reduce bandwidth bottlenecks and to help increase the benefits from economies of scale in addition to offering increased security, excellent data management, fast response, and room for expansion. Moreover, it is old and well known in the art that storage mediums are configured as databases. See *e.g.* Wolfe et. al. (U.S. 6,282,517 B1) ("Wolfe").

After careful review of the entire record, especially the specification, the Examiner finds that Applicant has not asserted any new or unexpected results regarding his hardware

² See *e.g.* Watson (U.S. 6,223,209 B1) disclosing distributed satellite world wide web servers containing identical information placed strategically throughout the Internet so as to be close to all potential clients to help reduce traffic bottlenecks; Midgely et. al. (U.S. 5,592,611 A) disclosing additional servers as a stand-in for a failed server so that client service requests are transparent to the user; Kriegsman (U.S. 6,370,580 B2) disclosing multiple servers as secondary web servers to optimize file transfers; Burns et. al. (U.S. 6,298,373 B1) disclosing cache servers which download content during off-peak hours to reduce traffic bottlenecks; Stiles (U.S. 6,219,692 B1) which discloses sending essentially identical tasks to multiple servers with differing processing loads to find the most preferred server provider; Zdepski et. al. (U.S. 5,825,884) disclosing an transactional server for TV networks; *How Networks Work*, Chapter 17 describing how sever based structures benefit from economies of scale in addition to offering security, excellent data management, fast response, and room for expansion; and *How the Internet Works*, Chapter 44 implementing a server based architecture in Internet e-commerce.

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configuration (and/or the software running his hardware configuration). Absent such new or unexpected results, such modifications either increasing or decreasing the number of servers or computers or even reassigning tasks to different server(s) or computers would have helped maintain benefits from economies of scale in addition to offering increased security, excellent data management, fast response, and room for expansion while reducing both operating and capital costs.

17. The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,³ the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only has Applicant not pointed to definitional statements in his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements⁴ with the required clarity, deliberateness, and precision.⁵ Third, after receiving express notice in the previous Office Action of the Examiner's

³ See the Examiner's previous Office Action mailed September 29, 2004, Paragraph No. 3.

⁴ "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

⁵ "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

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position that lexicography is not invoked,⁶ Applicant has not pointed out the “supposed errors” in the Examiner’s position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicant has not argued lexicography is invoked). Finally and to be sure of Applicant’s intent, the Examiner also notes that Applicant has declined the Examiner’s express invitation⁷ to be his own lexicographer.⁸ Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁹ The Examiner now relies heavily and extensively on this

⁶ See again the Examiner’s previous Office Action, Paragraph No. 3.

⁷ *Id.*

⁸ The Examiner’s requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner’s requirements were simply an express request for clarification of how Applicant intend his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO’s goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO’s The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed January 6, 2005).

⁹ See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

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interpretation.¹⁰ Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

18. Under the broadest reasonable interpretation standard noted above and unless modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner's claim interpretations (and ultimately the Board of Patent Appeals and Interferences¹¹ claim interpretations if necessary) during ex parte examination.

19. The Examiner finds that it is very old and well known in this art to have automatic ordering of products when such products drop below an assigned threshold. Such automatic reordering is done across a wide variety of industries. See e.g. Roach et. al. (U.S. 5,434,394); Salvo et. al. (U.S. 6,341,271 B1); Yamamoto et. al. (U.S. 5,771,172); Green et. al. (U.S. 5,664,100); Wallace (U.S. 6,366,829 B1); Hennig et. al. (U.S. 6,587,827 B1); and Kawashima et. al. (U.S. 5,168,445).

Response to Arguments

20. Applicant's arguments filed November 1, 2004 have been fully considered but they are not persuasive.

¹⁰ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]"

¹¹ See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) ("[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.").

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21. Applicant's arguments with respect to claim Camaisa have been considered but are moot in view of the new grounds of rejection.

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“Other References”

22. Applicant's traversal under the heading “Other References” on page 18 of his “Remarks” is acknowledged. However the Examiner maintains his position as stated in the previous office action. Applicant is reminded that if Applicant disagrees with the substantive statements made by the Examiner, Applicant must point out the supposed errors in the Examiner's position in accordance with 37 C.F.R. §1.111(b). The references are interpreted from the view of one of ordinary skill in the art. These three references are used to help show those structural characteristics that are old and well known and therefore need not be directly disclosed. “The law is clear that patent documents need not include subject matter that is known in the field of the invention and is in the prior art, for patents are written for persons experienced in the field of the invention. ... To hold otherwise would require every patent document to include a technical treatise for the unskilled reader.” *S3 Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1371, 59 USPQ2d 1745, 1749-50 (Fed. Cir. 2001) citing *Vivid Technologies, Inc. v. American Science and Engineering, Inc.*, 200 F.3d 795, 804, 53 USPQ2d 1289, 1295 (Fed. Cir. 1999) (“patents are written by and for skilled artisans”).¹² For example, when references such as Camaisa discusses the computer 102, the Examiner finds that the computer discussed in How Computers Work, pp 12 and 13, discloses the structural elements that make up the computer. The same analysis applies to ‘networks’ and the reference How Networks Work; work and the ‘Internet’ in How the Internet Works.

23. To be clear, the Examiner thus relies on How Computers Work, How Networks Work , in all his rejections. Finally, the Examiner finds that Applicant's statement under the heading

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“Other References” on page 18 is evidence of Applicant’s understanding of one of ordinary skill in the art.

Conclusion

24. Applicant’s amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

25. References considered pertinent to Applicant’s disclosure are listed on form PTO-892.

26. The following two (2) citations to the Manual of Patent Examining Procedure (“MPEP”) apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

¹² See also *In re Eltgroth*, 419 F.2d 918, 921, 164 USPQ 221, 223 (CCPA 1970) (“This court has often observed that minutiae of descriptions or procedures perfectly obvious to one of ordinary

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27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

28. Because this application is now final, Applicant is reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112 1st paragraph written description and enablement, §112 2nd paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

29. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding

skill in the art yet unfamiliar to laymen need not be set forth.").

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claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicant for his “Remarks” (beginning on page 12) traversing the Examiner’s positions on various points. If Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹³ the Examiner respectfully reminds Applicant to properly traverse the Examiner’s position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner’s positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF

January 6, 2005

¹³ *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner’s implied position that the references are analogous art.